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NO. 82-975

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1982

MEMBERS OF THE CITY COUNCIL OF THE CITY OF LOS ANGELES; THE CITY OF LOS ANGELES; and EDWARD D. LONGLEY, as Director of the Bureau of Street Maintenance for the City of Los Angeles,

Appellants,

vs.

TAXPAYERS FOR VINCENT, an unincorporated political association, and CANDIDATES' OUTDOOR GRAPHICS SERVICE (COGS), a California corporation,

Appellees.

ON APPEAL FROM UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

APPELLANTS' REPLY BRIEF

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APPELLANTS' REPLY BRIEF

I.

THE ORDINANCE DOES NOT PROHIBIT EFFECTIVE USE OF THE STREETS AS A PUBLIC FORUM

Appellees attempt to portray the City's ordinance as an absolute ban on the display of political signs in public

places. Aplee. Br. 8-9.[1/] However, as the City demonstrated in its opening brief (see Apnt. Br. 25-26), the City's ordinance leaves open numerous effective uses of its streets for First Amendment purposes. These include attaching signs to cars, homes, and businesses; carrying them on the sidewalks; and handing out leaflets to passersby.

In addition to those means, the City also permits the erection of "street banners" across streets, provided that permits are secured and that strict requirements for erection of the banners are met. (See Los Angeles Municipal Code Section 62.132, a portion of which is set forth at Aplee. Br. A 2.) Indeed, these banners provide precisely what the appellees seek: a place in the public domain where they may display their messages.

It is clear therefore that City's enforcement of Municipal Code Section 28.04 does not bar the use of the streets for communicative purposes. Rather, it merely continues the longstanding traditional policy of limiting the use of the objects of public property to the purposes for which they were originally constructed or installed.

1/ References to the Appellees' Brief are indicated by "Aplee. Br.", to the Appellants' Brief by "Apnt. Br.", to the Joint Appendix by "A.", and to the appendix to the Jurisdictional Statement by "App."

II.

THE ALTERNATIVE CHANNELS OF COMMUNICATION LEFT OPEN BY THE ORDINANCE ARE NO MORE BURDENSOME THAN POSTING SIGNS ON OBJECTS OF PUBLIC PROPERTY

Appellees argue that the posting of signs on objects of public property is essential to the running of an effective political sign campaign. (Aplee. Br. 35-36.) Although access to the public is essential to any political campaign, it does not follow that access to the objects of public property described in the City's ordinance is needed in order to gain access to the public.

Picketing with signs, leafletting, and attaching signs to homes, automobiles and other private property are all time-honored and effective means of communicating ideas to the public. Indeed, there is nothing in the record which casts doubt on the effectiveness of those means. (See A. 109-112, particularly 111-112.)

These methods are no more burdensome than posting signs on the objects of public property referred to in the City's ordinance. All of these methods require the expenditure of both time and money. Signs are generally not printed free of charge, and just as it takes time and effort to distribute handbills or locate signs on private property, so too, it takes time and effort to post signs on the objects to which appellees seek access. Moreover, there is no support in the record for appellees' assertion that because some private property owners might object to the political messages of some candidates, private property is generally not available to candidates. (See Aplee. Br. 35-36.)

III.

THE APPELLEES MISCONSTRUE THE RECORD

Appellees' Brief contains a number of significant exaggerations and misconstructions of the record herein. The most important of these are discussed below.

A. Appellees assert that the City has "historically acquiesced to the placement of political signs on public property." (Aplee. Br. 7, 16-17.) The record contains no basis for that assertion. As far back as 1947, the City was concerned enough about the proliferation of signs in violation of its ordinance that the Council adopted a resolution both urging compliance with the law, and instructing that candidates and commercial advertising agencies be advised about the requirements of the ordinance. (A. 13-14.) Although the law has not been universally obeyed, nothing in the record even suggests that enforcement has been lax or casual. (See A. 39-41.)

B. Appellees suggest that this case may be moot because their signs do not violate a strict reading of the City's ordinance. (Aplee. Br. 9.) They contend that although the ordinance prohibits the attachment of signs to utility "*poles*" and "*wire* appurtenances" (emphasis added), it does not prohibit the attachment of signs by looping them over "cross *bars*" appurtenant to the poles. *Id.* Their contention is certainly contrary to the administrative interpretation of the provision by the City's enforcement agency. After all, it was the City's removal of appellees' signs which prompted the filing of this lawsuit.

Obviously, the City has interpreted the phrase "wire appurtenances" to include the cross-wires[2/] (also called cross-arms),[3/] such as those depicted in the record at A. 96, 136, and 137.

C. Appellees assert that at least some candidates for public office have no access at all to private property on which they may display their signs. (Aplee. Br. 35.) In its amicus brief, the ACLU also makes this contention. The record simply does not support this assertion. Indeed, one of the photographs in evidence shows a billboard on private property urging support of a ballot measure. (A. 119.) Absent support in the record, the Court is being asked to speculate on this issue. Absent a factual showing that appellees, the poor, political candidates in general, or some protected class are uniquely made to suffer by the City's ordinance, there is no basis for the Court to seriously consider the contention that the City's ordinance violates the equal protection guarantee of the Constitution.

D. Appellees assert that the City's "own experts do not subscribe to the City Attorneys' argument that a total ban on temporary political signs to control the alleged problems is necessary." (Aplee. Br. 26.) They claim that the City's Director of Planning admits that regulation, rather than a total ban, would serve the City's needs. (Aplee. Br. 26-27.) First of all, the City does not assert that a "total ban on temporary political signs" is necessary to accomplish the City's purposes. To the contrary, the City's ordinance does

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2/ The district court used this term in its Finding of Fact No. 14. See App. 18a.

3/ The president of appellee Candidates' Outdoor Graphics Service used this term in his declaration filed below. A. 147, par. 5(a).

not constitute a total ban of signs throughout the City, and it is not aimed particularly at political signs. Political and other signs are allowed to be attached to private property. Also, they are allowed to be held on public property though not attached to it. Moreover, the Director of Planning expressly stated that the prohibition contained in the City's ordinance is a part of the City's overall program of sign regulation. (See A. 34 (par. 8), 36 (pars. 10-11) and 37-38 (par. 15).)

IV.

THE CITY WISHES TO BRING TO THE COURT'S ATTENTION AN AMENDMENT TO SECTION 28.04, WHICH IT CONTENDS DOES NOT AFFECT THE OUTCOME OF THIS LAWSUIT

As a result of delays in printing, distributing and inserting amendments to the Los Angeles Municipal Code into the published volumes, counsel was until very recently unaware of an amendment to Los Angeles Municipal Code Section 28.04. Thus, counsel did not previously bring to the Court's attention the fact that this measure had been amended by adding a new subsection (f) thereto. Subsection (f) was not a part of Section 28.04 when this lawsuit was decided by either the District Court or the Court of Appeals, having become effective on August 1, 1982. Subsection (f) is reprinted at Appendix "A" to this brief. (The contents of Subsection (f), and Section 80.07, to which it refers, have already been brought to the attention of opposing counsel.)

Subsection (f) authorizes the City to install signs on street lighting poles as part of a program sponsored by any City department having responsibility for public safety. For example, this provision authorizes the City to install crime prevention signs on street lighting poles as part of the Police Department program to involve residents in efforts to reduce crime, such as a "Neighborhood Watch" program.

The City regularly installs traffic control devices (*i.e.*, signs announcing traffic and parking regulations) on either street lighting poles or poles erected for that purpose. This is done by the Department of Transportation pursuant to Los Angeles Municipal Code Section 80.07 (see Appendix "B" hereto for the text of that section). These signs are necessary so that the public will be aware of and will thus obey traffic and parking regulations.

Obviously, the City also believes it necessary to permit the installation by the government of signs aimed at reducing crime or preventing other public safety hazards. Having balanced that need against the City's interest in preventing visual clutter, the City enacted subsection (f).

There is obviously a compelling interest here, as there is in connection with traffic control devices, which justifies allowing the City to post public safety signs, while not allowing private citizens to post their own signs on objects of public property. Indeed, one of the lessons of ***Perry Education Ass'n v. Perry Local Educators' Ass'n.***, ____ U.S. ____, 74 L.Ed.2d 794 (1983), is that the government may utilize some of its facilities for communicative purposes without thereby being required by the First Amendment to make those facilities available to the public at

large. See also, ***United States Postal Service v. Council of Greenburgh Civic Ass'ns. et al.***, 453 U.S. 114 (1981).

Authorization for the City to install signs relating to crime prevention, on City property, is obviously no different from authorization to install traffic control devices on such property. Thus, this amendment to Section 28.04 should have no affect on the issues or outcome of this lawsuit.

V.
CONCLUSION

For these reasons and those set forth in the earlier brief of the City, the judgment of the Court of Appeals should be reversed.

Respectfully submitted,

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October, 1983

Los Angeles Municipal Code Section 28.04, Subsection (f). (Added by Ordinance No. 156,852, effective August 1, 1982.)

(f) Nothing in this section shall prohibit the installation of signs on street lighting poles provided the sign is a part of a program sponsored by a City Department having specific responsibility for public safety and such signs and locations are approved by the Department of Public Works and are installed and maintained as authorized in Section 80.07 of this code. If such installation is requested by a citizen or citizen organization such party shall be liable for payment of all fees related to the installation of such signs in accordance with procedures approved by the Department of Public Works and the Department of Transportation.

Los Angeles Municipal Code Section 80.07.

Sec. 80.07. TRAFFIC CONTROL DEVICES POWERS AND DUTIES OF THE DEPARTMENT:

(a) Authorized Installations. Whenever by any provision of this chapter, the Department is authorized to install any traffic control devices, and such authority is made dependent upon a determination of the need therefor, it shall be the duty of the Department to make such determination only upon the basis of traffic engineering principles and traffic investigations and in accordance with such standards, limitations and rules as are hereinafter in this chapter laid down with reference to the particular kind of installation under consideration.

(b) Directed installations. It shall be the duty of the Department to install traffic control devices at a particular location, whenever directed to do so by any provision of this chapter or by any ordinance of this city.

(c) Installations Essential to Effectiveness of Traffic Laws. Whenever any traffic laws of this state, or any traffic regulations set forth in this chapter, requires for its effectiveness that traffic control devices be installed to give notice to the public of the operation or application of such law or regulations, the Department is hereby authorized to install the necessary devices, subject to any limitations or restrictions set forth in the law or regulation involved.

(d) Additional Installations. Subject to the requirements of Subsection (a) of this section, the Department is hereby authorized to install such additional traffic control devices, not expressly provided for in this chapter, as it determines are necessary to regulate, warn, or guide traffic, and to remove such devices when it determines that they are no longer necessary to regulate, warn, or guide traffic. In addition to traffic control devices, the Department is authorized to install certain signs relating to public safety, providing such signs are approved by the Department of Public Works as provided in Section 28.04 and provided further that no such signs shall conflict with or detract from any traffic control devices. The Department is also authorized to remove any such sign.

(e) Authority of the Department Exclusive. No officer, board or department of this City other than the Department of Transportation and no private agency or person, shall install, place, maintain, or remove any traffic control device or other type of sign within the purview of this Chapter except as provided in this chapter.

(f) "Install." Authority to install, as the term is used in this chapter, includes authority to "cause to be installed."

(g) "Remove." Authority to remove, as the term is used in this chapter, includes authority to "cause to be removed."